

PJS:MJB:cer

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

STEPHEN G. CONKLIN,	:	NO. 1:CV-13-02618
Plaintiff	:	
	:	
v.	:	(Judge Sanchez)
	:	
YVETTE KANE, PETER J. SMITH,	:	
MARK E. MORRISON, AND	:	
CHRISTINA GARBER,	:	
	:	
Defendant	:	Filed Electronically

**DEFENDANT PETER J. SMITH, MARK E. MORRISON, CHRISTINA
GARBER'S MOTION TO DISMISS AND/OR,
IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

Defendant Peter J. Smith, Mark E. Morrison, and Christina Garber hereby move to dismiss the federal complaint filed by Stephen G. Conklin. To the extent this Court does not dismiss the entire complaint, defendants move for summary judgment as to the remaining portions of the complaint. Defendants state as follows:

1. Plaintiff Stephen G. Conklin, pro se, filed a civil action against Defendant the Honorable Yvette Kane in the Court of Common Pleas of Dauphin County, Pennsylvania (2013-cv-2962), on or about April 4, 2013.
2. On June 7, 2013, Mr. Morrison, on behalf of Judge Kane, removed the

matter to this Court. The action was docketed as Conklin v. Kane, No. 1:13-cv-01531 (M.D. Pa), and, pursuant to 28 U.S.C. § 292(b), assigned to the Honorable Timothy J. Savage of the District Court for the Eastern District of Pennsylvania.

3. On July 8, 2013, Mr. Conklin filed a Motion for Remand, arguing that the writ did not provide the legal basis for the state court action and the removal was done for an improper purpose contrary to Rule 11 of the Federal Rules of Civil Procedure. Mr. Conklin sought costs associated with the remand motion in the amount of \$500.00. See id. (Doc. No. 4).
4. On July 13, 2013, Mr. Conklin sent Mr. Morrison a letter, purporting to be a Notice and requesting that he “promptly withdraw your filing of Removal” and noting he will seek \$20,000.00 in sanctions for the alleged violation of Rule 11.
5. On July 25, 2013, Mr. Morrison, on behalf of Judge Kane, filed a Brief in Response to the motion for remand. See Conklin v. Kane, No.13-cv-1351 (Doc. No. 6)
6. On August 27, 2013, this Court remanded the matter back to Dauphin County, and did not award costs to Mr. Conklin. See id. (Doc. No. 7).
7. After remand to the Dauphin County court, Mr. Morrison, on behalf of Judge Kane, filed a Rule to file a complaint directed to Mr. Conklin.

8. On October 21, 2013, Mr. Conklin, through counsel, filed the instant federal Bivens action against Judge Kane; Mr. Morrison; Peter J. Smith, the United States Attorney; and Christina Garber, a Legal Assistant in the United States Attorney's Office. See Conklin v. Kane et al., 1:13-cv-02618-JRS (M.D. Pa.). Pursuant to 29 U.S.C. § 292(b), the Honorable Juan R. Sanchez of the Eastern District of Pennsylvania was assigned.
9. In the Bivens complaint noted above, Mr. Conklin claimed that the federal defendants engaged in a conspiracy to retaliate against him and his attorney, Don Bailey, in violation of his First and Fourteenth Amendment Rights. Mr. Conklin argued that Mr. Morrison had no authority to remove the Dauphin County writ to this Court, which caused him unnecessary expense and emotional distress. Mr. Conklin also claimed that defendants violated his Fourth Amendment right to be free from unlawful searches, and he asserted a purported claim under 18 U.S.C. § 242 for "criminal violation of his civil rights." Id.
10. As relief, Mr. Conklin seeks compensatory and punitive damages, and damages for pain and suffering, humiliation, and embarrassment for emotional distress together with costs, fees, attorney's fees, and such other relief as may be deemed appropriate.
11. Mr. Conklin's constitutional claims in his federal complaint are stated in

conclusory fashion, and thus do not meet the pleading standards set forth in Ashcroft v. Iqbal, 556 U.S. 662 (2009) and Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007).

12. There is no private cause of action for 18 U.C.S. § 242.

13. Alternatively, Mr. Morrison's action of removing the Dauphin County matter was based on sound research and his understanding of the law.

14. In addition, but for supervisory and administrative functions, Mr. Smith and Ms. Garber had no personal involvement in the Dauphin County matter.

15. Accordingly, for the reasons noted above and stated in their brief, Defendants Smith, Morrison, and Garber seek dismissal from this matter, or judgment in their favor.

16. The undersigned contacted Mr. Bailey for his concurrence, and he does not concur in the motion. Mr. Bailey, however, stated that if the undersigned confirmed that Ms. Garber was a legal assistant (secretarial role), his client would be amendable to dismissing Ms. Garber from this case.

WHEREFORE, this Court should dismiss this case, or alternatively, grant summary judgment to Defendants Smith, Morrison, and Garber.

Respectfully submitted,

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Date: January 6, 2014

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

STEPHEN G. CONKLIN,	:	NO. 1:CV-13-02618
Plaintiff	:	
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v.	:	(Judge Sanchez)
	:	
YVETTE KANE, PETER J. SMITH,	:	
MARK E. MORRISON, AND	:	
CHRISTINA GARBER,	:	
	:	
Defendant	:	Filed Electronically

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that he is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers.

That on January 6, 2014, he served a copy of the attached

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by the Court's ECF filing system

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s/Michael J. Butler
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